INTER-OCEAN TOWING PTE. LTD

v.

SELCO (SINGAPORE) PTE. LTD.

HIGH COURT, SINGAPORE
TS SINNATHURAY J
[SUIT NO. 70 OF 1979]
31 DECEMBER 1982

CONTRACT: *Agreement for towage services through agents - Claim for additional towage costs or alternatively damages on quantum meruit and for demurrage - Tugowners - Whether identity known to defendants - Title in the vessel - Whether had passed to the plaintiffs.*

Pursuant to an agreement between the tugowners of "Wilbie", through their managing agents Sime Darby, and defendants, barges Selco L8 & L9 belonging to the defendants were towed from Chittagong to Singapore for the sum of $40,000. The amount was paid in full to the owners of "Wilbie". During the journey an additional third barge Selco L19 belonging to the defendants was towed by "Wilbie" from Chittagong to Singapore, on instructions from the defendants' agents in Chittagong.

Therefore the plaintiffs claimed an additional cost of $20,000 or alternatively claim for damages on *quantum meruit*. The plaintiffs also claimed a further sum of $16,560 for demurrage as the tug was delayed in Chittagong beyond delay time.

The defence was that they had no knowledge that the plaintiffs were the owners of "Wilbie" and that whether Sime Darby were acting as agents of the plaintiffs.

Held:

[1] The agreement was between the tugowners and the defendants and as such they (defendants) would not know that the plaintiffs were tugowners. Further Sime Darby were acting for an unnamed principal identified only as "Tugowner".

[2] "Wilbie" was not registered in the plaintiffs' name in the Registry of Ships until 4 July 1973. As s. 411(1) and (2) of the Act had not been strictly complied with no title in the vessel passed from the seller to the purchaser. Therefore legal ownership of "Wilbie" had not been passed to the plaintiffs.

[Claim dismissed with costs.]

Legislation referred to:

Merchant Shipping Act (Cap 172) [Sing], s. 411(1), (2)

JUDGMENT

TS Sinnathuray J:

The claim of the plaintiffs, Inter-Ocean Towing (Pte) Ltd., against the defendants, Selco (Singapore) Private Limited, is in respect of a towage contract.

It is common ground that pursuant to the Agreement for Towage Services ("the Agreement") dated 12 January 1973 made between the Owners of the Tug "Wilbie" through their managing agents, Sime Darby Shipping Limited ("Sime Darby"), and the defendants, the "Wilbie" towed

the defendants' barges "Selco L8" and "Selco L9" from Chittagong to Singapore for a lump sum of $40,000 and, that the defendants have paid in full the said sum to the owners of "Wilbie". It is also common ground that in that journey an additional third barge belonging to the defendants, "Selco L19" was also towed by the "Wilbie" from Chittagong to Singapore.

The plaintiffs' case is that the towage of the third barge was executed by the master of the "Wilbie" on instructions given to him by the defendants' agents in Chittagong. Consequently, the plaintiffs claim $20,000 as additional towage costs or alternatively they make a claim for damages on *quantum meruit*.

There is a further claim of the plaintiffs for demurrage in the sum of $16,560 on the ground that "Wilbie" was delayed in Chittagong beyond "the delay time" agreed upon by the parties in the Agreement.

The foundation of the plaintiffs' claim set out in the Statement of claim is that when the Agreement was made, the plaintiffs were the owners of "Wilbie" and, that the Agreement was entered into by Sime Darby for and on behalf of the plaintiffs. The defendants dispute these allegations of facts. They say in their defence that they have no knowledge that the plaintiffs were the owners of "Wilbie" and, that they also have no knowledge as to whether Sime Darby were acting as agents of the plaintiffs. The burden of proof of these facts is therefore on the plaintiffs.

The only evidence on record that at the material time the plaintiffs were the owners of "Wilbie" is the oral evidence of Mr. Willie Loh Kum Yong, the managing director of the plaintiffs. He said he bought "Wilbie" in June 1972 in his own name with the intention of setting up a limited company to own the vessel. The company, the plaintiffs, was then incorporated on 10 January 1973. The directors of the plaintiffs were himself his wife, his father-in-law and his three brothers-in-law. He said that after the incorporation of the plaintiffs the directors verbally agreed with him that the plaintiffs "will take over all the rights and liabilities of the "Wilbie" and the "Wilbie"." He then entered into an oral agreement with the managing director of Sime Darby, that Sime Darby be the managing agents of the "Wilbie". He said that the oral agreement with Sime Darby was for the plaintiffs. He claimed that Sime Darby then entered into the Agreement for and on behalf of the plaintiffs. It is of interest to mention also that it was Mr. Willie Loh who signed the Agreement "For and on behalf of the said Tugowner by its Managing agents, Sime Darby Shipping Ltd, Singapore" in his capacity as charter manager of Sime Darby.

First as regards the Agreement, it is clear that the parties to it are the "Tugowner" and the defendants. Sime Darby was acting for an unnamed principal identified only as "Tugowner". From the agreement the defendants would not know that the plaintiffs were the "Tugowner".

Next, against the oral evidence of Mr. Willie Loh, there is this documentary evidence, the bill of sale dated 29 June 1973. It states that on that day Mr. Willie Loh sold "Wilbie" to the plaintiffs for $500,000. This was almost six months after the incorporation of the plaintiffs and the making of the Agreement. In my view, the documentary evidence wholly discredits the corresponding oral evidence of Mr. Willie Loh.

Also, as to who was the owner of "Wilbie" at the material time, there is the evidence of Mr. R.P.Seth, the master of the vessel at that time who gave evidence for the plaintiffs. He was employed by Sime Darby. He said: "I did know who the owner of the vessel was. It was Mr. Willie Loh. I did not in 1973 know of plaintiff company".

There is one other material fact. "Wilbie" was not registered in the plaintiffs' name in the Registry of Ships until 4 July 1973. As to the legal effect of that, I refer to s. 411(1) and (2) of the Merchant Shipping Act (Cap 172). The subsections state that a Singapore ship shall be transferred by a bill of sale and that the bill of sale shall be in the prescribed form. The said form states, *inter alia*, that a purchaser of a Singapore registered vessel does not obtain a complete title until the bill of sale has been recorded at the Port of Registry. I therefore accept the submission for the defendants that if s. 411(1) and (2) of the Merchant Shipping Act is not strictly complied with, no title in the vessel passes from the seller to the purchaser.

Finally, as regards the alleged oral agreements, one, between Mr. Willie Loh and the directors of the plaintiffs, and the other, between him and Sime Darby, even if they were made as alleged by him which, having regard to my earlier observation, I gravely doubt, they are not, in my view, sufficient in law to give legal ownership of "Wilbie" to the plaintiffs.

For these reasons alone, I dismissed the plaintiffs' claim with costs.

Also found at [1983] 1 CLJ 105